

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Eric Krieg

v.

Case No. 21-cv-680-SE

FCI Berlin, Warden

O R D E R

On February 16, 2023, Magistrate Judge Andrea K. Johnstone issued a Report and Recommendation ("R&R") on the pending motions in this case. See doc. no. [15](#). The magistrate judge concluded that the plaintiff, Eric Krieg, had failed to exhaust his administrative remedies and recommended that the undersigned grant the warden's motion for summary judgment and deny Krieg's motion for summary judgment.

On March 9, 2023, Krieg filed a "Motion to Put Case in Abeyance." Doc. no. [16](#). In his filing, Krieg represents that this case is similar to another case in this district in which the court issued a ruling adverse to him. See Krieg v. Warden, FCI Berlin, Case No. 22-cv-105-SM. In that case, the court granted the defendant's motion for summary judgment, concluding, as the magistrate judge did here, that Krieg failed to exhaust his administrative remedies. [Krieg v. Warden, FCI Berlin, No. 22-cv-105-SM, 2022 WL 4121422 \(D.N.H. Sept. 9, 2022\)](#). Krieg states that he has appealed the court's order granting the defendant's motion for summary judgment in that case and his

appeal, if successful, would affect the magistrate judge's recommendation in this case. Therefore, he requests that the court stay this case pending the outcome of his appeal.

Whether the court construes Krieg's filing as a motion or an objection to the R&R, the court declines Krieg's request to stay the case.<sup>1</sup> For the reasons stated in the R&R, Krieg did not exhaust his administrative remedies and, therefore, the warden is entitled to judgment. Thus, after due consideration of Krieg's motion (doc. no. 16), I herewith approve the Report and Recommendation of Magistrate Judge Andrea K. Johnstone dated February 16, 2023 (doc. no. 15), grant the warden's motion for summary judgment (doc. no. 11), and deny Krieg's motion for summary judgment (doc. no. 12).

"[O]nly those issues fairly raised by the objections to the magistrate's report are subject to review in the district court and those not preserved by such objection are precluded on appeal." [Sch. Union No. 37 v. United Nat'l Ins. Co.](#), 617 F.3d 554, 564 (1st Cir. 2010) (quotation omitted); see [United States v. Valencia-Copete](#), 792 F.2d 4, 6 (1st Cir. 1986) (after proper notice, failure to file a specific objection to magistrate's

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<sup>1</sup> The court notes that Krieg states in his motion that he "has filed a timely motion for an extension for filing his objections." Doc. no. 16 at 1. The court has received no such motion. As explained below, however, the court construes Krieg's filing as an objection so that he preserves his appellate rights.

report will waive the right to appeal). To preserve Krieg's appellate rights, the court construes document no. 16 as an objection to the R&R, rather than a motion to stay.

This action is dismissed in its entirety. The clerk is directed to enter judgment and close this case.

SO ORDERED.

A handwritten signature in blue ink, appearing to read 'SDElliott', is written over a horizontal line.

Samantha D. Elliott  
United States District Judge

Date: March 15, 2023

cc: Eric Krieg, pro se  
Seth Aframe, AUSA